IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.2338 2006(O&M)
Date of Decision: 22.1.2007

Usha Rani and others

Appellants

versus

Tejinderpal Singh and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE BALDEV SINGH

Present: Shri Sham Lal Bhalla, Advocate for the appellants

Jasbir Singh, J. (Oral)

This appeal has been filed against award dated 7.11.2005 passed by the Motor Accident Claims Tribunal, Ropar (in short, the Tribunal), vide which application of the appellants, to claim compensation, was dismissed.

Record reveals that the appellants-claimants filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short, the Act), to claim compensation, with regard to death of their predecessor in interest Shri Kuldeep Chand, who allegedly died in a motor accident on 24.8.1999. The Tribunal, on analysis of evidence came to a conclusion that the accident, in question, had not occurred. It was observed thus:-

> *"13. I have considered the rival contentions of the learned counsel for the parties. However, I do not find merit in the contentions of the learned counsel for the claimants. Firstly this fact is admitted that PW-3 Naresh Kumar is not author of the F.I.R. He is admittedly real brother of the deceased, albeit*

RW-1 Amarjit is also brother of the deceased. PW-3 Naresh Kumar no doubt deposed that the vehicular accident had taken place with scooter No.HR-03A/9065 being driven by respondent No.1 Tejinderpal Singh at a very high speed, rashly and negligently and struck his scooter against the scooter of the deceased by coming to the wrong side of the road. However, cumulative effect of his evidence falsifies his presence at the time of alleged accident because in para No.24 of the claim petition itself it is averred that on 24.8.1999 at about 8.40 p.m. deceased Kuldeep Chand was coming from Chandigarh to Kurali after doing domestic work on scooter No. PB-12-B/9330. He was being followed by his brother Amarjit when the accident had taken place near the Court complex, Kharar at about 8.40 P.M. It is no where mentioned at all that Kuldeep Chand was being followed by PW-2 Naresh Kumar alongwith Khem Raj on the separate scooter. On the other hand RW-1 Amarjit has clearly contradicted the allegations contained in the F.I.R. Ex.P-2 that in fact no accident had taken place with Scooter No.HR-03A/9065 nor it was driven by Tejinderpal Singh and that at about 8.40 P.M. when they reached near Court Complex Kharar suddenly a truck driven by its driver rashly and negligently came from the back side and after overtaking his scooter struck against the scooter of deceased and crushed head and mouth of the deceased and fled away from the spot. He and Harinder Dhiman could not note down the number of the truck due to darkness and thereafter he informed the accident to the police

orally and the police procured his signatures on the blank papers which he signed in good faith. He was confronted with F.I.R. Ex.P-2 which he reiterated that Ex.P-2 was not got recorded by him. He equally deposed that he was having cordial relation with his brothers. Perusal of the F.I.R. supports the statement of RW-1 Amarjit to the extent that he and Harinder Dhiman were going on scooter No. PB-12/8656 and were coming back to Kurali from Chandigarh and that Kuldeep Chand was going 20 yards ahead.

14. RW-3 Tejinderpal Singh also deposed vide affidavit Ex.RW-3/A that no accident had ever taken place with Scooter No.PB-12-B/9330 of Kuldeep Chand while he was driving Scooter No.Hr-03A/9065 on 24.8.1999 nor he drove the said scooter nor he knows the owner of Scooter No.HR-03A/9065. When cross-examined he states that F.I.R. Ex.P-2 was registered against him on account of death of Kuldeep Chand but the same was falsely lodged and he was acquitted in the Criminal case. He was however, having Scooter No. CH-01U/5766 in the year 1999 but no accident had taken place while driving scooter No. CH-01U/5766. Even respondent No.2-A Jasminder Kaur denied the involvement of scooter No.CH-01U/5766 owned by her and the same was given to Tejinderpal Singh. Statement of PW-3 Naresh Kumar when analysed in its correct perspective renders his presence doubtful at the place and time of accident because of admission in the claim petition itself that only his brother RW-1 Amarjit was following the deceased on his scooter and

equally the same finds support partly in the F.I.R. Ex.P-2 that Amarjit alongwith Harinder Dhiman sitting on the pillion seat were following the deceased. Secondly perusal of the medical evidence of RW-2 Dr.H.S.Oberai, Medical Officer, Civil Hospital, Kharar supports the ocular version of RW-1 Amarjit that there was abrasion 28 x 65 cm present over right side of chest and right shoulder extending to neck and face. The facial bones and skull crushed into small pieces. Scalp hanging in small loose tags. Brain matter was protruding out. Right eye ball was miksing. Left eye ball was protruding out. The Doctor has also opined that other injuries lacerated wound 12 x 3 x 3cm over right groin, two small lacerated wounds 2 x 1 and 3x 1 cm over scrotom and abrasion 96 x 24 cm over right side of back extending to right buttock. He further opined that injuries No.1 and 4 can be caused by running over by a heavy vehicle and these injuries cannot be caused by mere fall. He also stated that deceased had one artificial leg. When cross-examined he ruled out the possibility of injury No.1 being caused by a light vehicle because size of the abrasion was 28 x 65 cm. Even Tejinderpal Singh alleged driver of the scooter was also acquitted by the Criminal Court because Amarjit and Harinder Dhiman had also not supported the prosecution allegations against him that he was driving the Scooter No.Hr-03A/9065 rashly and negligently resulting into the death of Kuldeep Chand. Though finding of the Criminal Court is not binding yet it has the probative value. Therefore, the cumulative effect of statement

of Amarjit, medical evidence of Dr.H.S.Oberai and acquittal of Tejinderpal Singh militate against the plea of the claimants about causing death of Kuldeep Chand by respondent No.1 Tejinderpal Singh by his rash and negligent driving of Scooter No.HR-03A/9065. I also do not find any infirmity in the statement of RW-1 Amarjit to impeach his credibility or any ulterior motive to dis-trust him. There is every possibility that Kuldeep Chand might have been killed by the rash and negligent driving of some unknown heavy vehicle driver and fled away and that respondent No.1 Tejinderpal Singh was made the scape-goat with a view to get compensation from the Insurance Company in respect of the scooter insured with it. Therefore, I decide this issue against the claimants."

We feel that the finding given by the Tribunal is perfectly justified. In FIR, there is no mention of Scooter bearing No.HR-03A-9065 as an offending vehicle. Rather it was said that the accident was caused by a truck. FIR was got recorded by real brother of the deceased, who, as per allegations, was following the deceased on a motor cycle. Presence of Naresh Kumar, the alleged eye witness, has rightly been discarded. Otherwise also, the medical evidence clearly indicates that the accident might have been occurred with some heavy vehicle and not with a scooter. Appeal is also barred by limitation, for which no reasonable explanation has been given. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

January 22, 2007 **(Baldev Singh)**

gk

Judge